



Education and Local Government Interim Committee

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58th Montana Legislature

SENATE MEMBERS

DON RYAN--Vice Chair
GREGORY BARKUS
WILLIAM GLASER
RICK LAIBLE
JEFF MANGAN
DEBBIE SHEA

HOUSE MEMBERS

JOAN ANDERSEN--Chair
NORMAN BALLANTYNE
SUE DICKENSON
TOM FACEY
VERDELL JACKSON
LARRY LEHMAN

COMMITTEE STAFF

CONNIE ERICKSON, Research Analyst
EDDY MCCLURE, Staff Attorney
SANDRA SHEPHERD, Secretary
PAMELA JOEHLER, Fiscal Analyst

LOCAL GOVERNMENT SUBCOMMITTEE MINUTES

September 14, 2004

Room 137, State Capitol
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. JEFF MANGAN, Chair

SEN. WILLIAM GLASER
SEN. RICK LAIBLE
REP. JOAN ANDERSEN

STAFF PRESENT

LEANNE KURTZ, Research Analyst
FONG HOM, Secretary

Visitors & Agenda

Agenda, Attachment #1

CALL TO ORDER AND ROLL CALL

CHAIRMAN MANGAN called the Subcommittee to order at 3:00 p.m. and the secretary noted the roll (see *ATTACHMENT #3*). SEN. LAIBLE moved that the minutes from the last meeting be adopted. SEN. ANDERSEN seconded the motion. The minutes were adopted unanimously.

Tim Davis, Montana Smart Growth Coalition, distributed a handout (see *Exhibit 1*) with

proposed areas of general agreement among members of the HJR 37 working group for changes to sanitation review of subdivision, and told the committee that more work needs to be done on the details and language before it becomes a draft.

The first item states that a subdivider would be required to include most of the water and sanitation information that is required by DEQ at the preliminary plat stage. It would give local government the chance to address real information that the subdivider has collected on water and sanitation up front.

The second item proposes that all public comments relating to water and sanitation during the review of proposed preliminary plat would be required to be forwarded or summarized and forwarded to DEQ (or to local sanitarians in contracted counties) to assist in water and sanitation permit decisions.

The third item is that local government could not deny or impose conditions unless, based on water and sanitation, regulations are in effect that it can hang those conditions or denials upon. **Mr. Davis** commented that when you're dealing with water and sanitation, the local government would not be able to create a public health or safety reason for denial unless they could attribute it to water sanitation, subdivision regulations, zoning regulations, water quality districts or other regulations that they're empowered to adopt.

Mr. Davis further commented that the fourth item would create a smaller process for lots between 20 acres and 160 acres for review of water and sanitation at the preliminary plat stage that would be done by the counties, the same review that local governments would do for all subdivisions at the preliminary plat stage. Item number 4 and item number 1 are basically the same review at the preliminary plat stage, but subdivision lots between 20 and 160 do not go to DEQ. The counties would conduct a limited sanitation review.

SEN. LAIBLE asked if the proposals would affect both major and minor subdivisions. **Mr. Davis** replied yes, that was his understanding and what was agreed to

Peggy Trenk, Montana Association of Realtors, commented that she did not have a lot to add to what Mr. Davis presented. A lot still remains in the details and will have to be worked on in the future. She appreciated the chance to work with the group.

Myra Shults, Montana Association of Counties, commented that she had gone over these points with Harold Blattie of MACo and they seemed fine to him. Counties are very interested in getting the sanitarians involved. What's important is to determine what impact those proposals would have on the sanitarian's office. With this new process, not much is going to change with the lots of up to 20 acres in size because the subdivider will have to provide that information and there will be a due diligence so there can be some comment on it before it goes to DEQ. The change from the county standpoint is going to be in what information will need to be reviewed for lots between 20 acres and 160 acres. A number of counties have been sued for not addressing the AG's opinion (49 Op. Att'y Gen. No. 7, 2001). There will be an increased level of scrutiny by the county sanitarian during the preliminary plat stage so it won't be left until someone buys the lot.

Jim Madden, Attorney with DEQ, said that DEQ is supportive of the work of the group. They

were called in as technical advisor of the first item to what kind of information might be useful at the preliminary plat stage that would facilitate the sanitation review and also what kind of information might be useful when reviewing larger parcels. They will continue to work with the group.

Jim Carlson, Director of Environmental Health, City County Health Department, Missoula, has concerns regarding the merging of sanitary review into the preliminary plat process from the stand point of work flow. A lot of information collected for sanitation and subdivision is very detailed and site specific. If, at the preliminary plat process, a number of things change, the applicant would have to recollect a lot of very expensive information.

Joan Miles, Lewis and Clark County Health Department, said that she hoped that these discussions continue and that the health departments can be part of these discussions. Something needs to be done to straighten out how counties time their reviews under the AG opinion because there is a lot of confusion around the state on that issue.

Michael Kakuk, Association of Realtors, said that the working group inherited the sanitation issue as an outgrowth of its work on the subdivision and platting act study. They can't go forward without involving the health departments and the sanitarians, and now that they know that it will be worth their time, they will definitely involve all appropriate parties.

Ms. Shults said she is telling the counties that when a subdivision application comes in, it should go to the health department. Lewis and Clark County is doing that as well as a number of smaller counties, so there was never any intention to have local planning departments process preliminary plats and make sanitary decisions. They know that county commissioners can't make the hard scientific decisions and that planners can't make the decisions that the health department needs to make. Ideally there would be a parallel review so all of the issues that apply to the development can be addressed during the preliminary plat stage as was required by the AG's opinion.

SEN. LAIBLE said that based on how much was accomplished earlier with the bill draft, he has submitted a request for a senate joint resolution to continue this study.

SEN. GLASER said that it appears that the planners and the real estate people have come to the realization that they need to resolve the issue and start working for the people of Montana.

SEN. MANGAN said that if the working group comes up with some points of consensus on some basic concepts and can build a bill, he and SEN. LAIBLE would work with staff and carry that jointly and work it through the legislative process along with the continuation of the study. SEN. MANGAN asked for an idea of what needs to be done in the next few months before the session starts. **Mr. Davis** said the group would work on what exactly would be addressed at the preliminary plat stage for all subdivisions and nail that down by early December so that they are not coming into the session to work out the details. SEN. MANGAN asked that the working group keep the committee informed, particularly he and SEN. LAIBLE, through staff should there be a bill.

Ms. Shults thanked SEN. MANGAN and SEN. LAIBLE for agreeing to jointly carry any

consensus drafts they come up with.

SEN. MANGAN commented that he was going to sign a bill draft request with the information talked about today and that staff's contact point would be the working group. Further, he said that whatever comes out of this has to be consensus for the bill. He would not go forward with something if some members are unhappy with it and he is sure SEN. LAIBLE will expect the same. If they can't reach consensus, then the bill will not be drafted. As long as there is consensus, he and Senator Laible will jointly put their names on it. SEN. LAIBLE agreed.

ADJOURN

Motion made by the SEN. MANGAN and seconded by SEN. LAIBLE to adjourn the meeting. The meeting was adjourned at 3:37 p.m.

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